

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
UNITED STATES OF AMERICA

-against-

HOWARD MIDGETTE,

Defendant.  
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DEARIE, Chief Judge.

**ORDER**

97 cr 998 (S-2) (EHN)

June 16, 2008, defendant moved to be re-sentenced pursuant to 18 U.S.C. § 3582(c)(2). The Court has reviewed defendant's request, together with the government's response. In particular, the Court notes that Judge Nickerson found defendant's involvement in the charged conspiracy to be "minor," and that defendant accepted responsibility for this role by pleading guilty to the conspiracy charge. He has been incarcerated for close to 12 years.

The government does not dispute that Amendment 706 reduces the applicable guideline range to 151 to 188 months. It is accordingly within the Court's discretion to reduce defendant's sentence to time served.<sup>1</sup> The Court therefore orders that the defendant be released from custody effective ten days from the date of this Order. The Clerk of the Court is directed to prepare and file an Amended Judgment and to transmit a copy of same to the United States Sentencing Commission.

SO ORDERED.

Dated: Brooklyn, New York  
December 9, 2008

s/ Judge Raymond J. Dearie

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RAYMOND J. DEARIE  
United States District Judge

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<sup>1</sup>See U.S.S.G. § 1B1.10 app. note 3 ("[I]n no case . . . shall the term of imprisonment be reduced below time served.").